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Environment and Natural Resources Division
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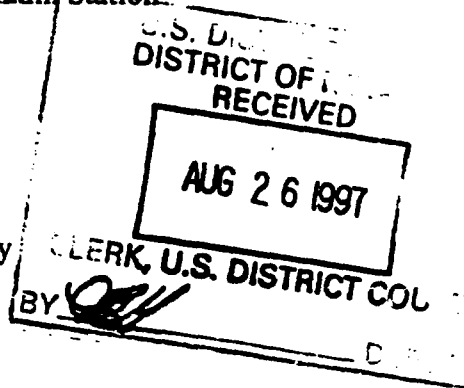
AUG 28 1997
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LAUREN S. WILSON
CLERK
BY [signature]
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

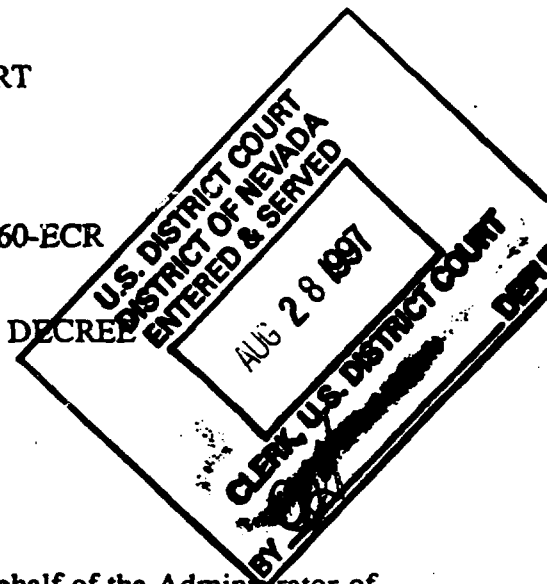
v.

POLY-CARB, INC., et al.,

Defendants.

CV-N-91-360-ECR

CONSENT DECREE

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA").

B. The United States in its complaint seeks reimbursement of response costs incurred by EPA and the Department of Justice for response actions in connection with the release or

1 threatened release of hazardous substances at the Polycarb Superfund Site (the "Site"), civil
2 penalties for failure to comply with EPA's Administrative Order 88-01 and treble damages..

3 C. The release or threatened release of hazardous substances at or from the Site has
4 caused the United States to incur response costs.

5 D. The United States and Montana Refining Company (MRC) agree and this Court, by
6 entering this Decree, finds that settlement of this matter will avoid further prolonged and
7 complicated litigation and that this Consent Decree is fair, reasonable, and in the public
8 interest.

9 E. MRC does not admit any liability arising out of the transactions or occurrences
10 alleged in this action.

11 THEREFORE, with the consent of the parties to this Decree, it is ORDERED,
12 ADJUDGED, AND DECREED:

13
14 **II. JURISDICTION**

15 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal
17 jurisdiction over MRC. Solely for the purposes of this Consent Decree, MRC waives all
18 objections and defenses that it may have to jurisdiction of the Court or to venue in this District
19 and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter
20 and enforce this Consent Decree.

21
22 **III. PARTIES BOUND**

23 2. This Consent Decree is binding upon the United States and upon MRC and its
24 successors and assigns. Any change in ownership or corporate or other legal status, including,
25 but not limited to, any transfer of assets or real or personal property, shall in no way alter the
26 status or responsibilities of MRC under this Consent Decree.

27
28

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

b. "Consent Decree" shall mean this Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the U.S. Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

g. "Parties" shall mean the United States and the MRC.

h. "Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs that EPA and the U.S. Department of Justice on behalf of EPA have incurred at the Site and paid through the date of lodging of this consent decree with the Clerk of Court, plus accrued interest on all such costs through such date.

i. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

j. "MRC" shall mean Montana Refining Company.

k. "Site" shall mean the Polycarb Superfund Site near Wells, Nevada.

1. "United States" shall mean the U.S. Environmental Protection Agency and the U.S. Department of Justice acting on behalf of EPA.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the United States. Within 30 days of entry of this Consent Decree, MRC shall pay to the United States a total of \$665,000 for Past Response Costs by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Site Spill Number NVD982028706 and the U.S.A.O. file number 91V2050. Payment shall be made in accordance with instructions provided by the Plaintiff to MRC upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

VI. FAILURE TO MAKE TIMELY PAYMENTS

5. Interest on Late Payments. In the event that any payment required by Section V is not made when due, Interest, as provided for in Paragraph 3(e), shall accrue on the unpaid balance, through the date of payment.

6. Stipulated Penalty. If any amounts due to the United States under this Consent Decree are not paid by the required date, MRC shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$1,000.00 per day that such payment is late. Stipulated penalties are due and payable within 30 days of MRC's receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 89509 and shall reference CERCLA Site Spill Number NVD982028706 and DOJ Case Number 90-11-3-564. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XI [Notices and Submissions].

1 7. If the United States must bring an action to collect any payment required by this
2 Consent Decree, MRC shall reimburse the United States for all costs of such action, including
3 but not limited to, costs of attorney time.

4 8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or
5 sanctions available to Plaintiff by virtue of MRC's failure to make timely payments required by
6 this Decree.

7
8 **VII. COVENANT NOT TO SUE BY PLAINTIFF**

9 9. Covenant Not to Sue. Except as specifically provided in Paragraph 10, the United
10 States covenants not to sue MRC under Sections 106(b) and 107 of CERCLA to recover Past
11 Response Costs as defined under this Consent Decree or civil penalties or treble damages as
12 alleged in the complaint. This covenant not to sue extends only to MRC and does not extend
13 to any other person. This covenant not to sue shall take effect upon receipt by the United
14 States of all payments required by Sections V and VI of this Consent Decree.

15 10. Reservation of Rights

16 a. General. The covenant not to sue set forth in the preceding paragraph does
17 not pertain to any matters other than those expressly specified therein. The United States
18 reserves, and this Consent Decree is without prejudice to, all rights against MRC with respect
19 to all other matters. Except as provided in the preceding paragraph, nothing contained herein
20 shall in any way limit or restrict the response and enforcement authority of the United States to
21 initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107
22 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against
23 MRC or against any other person or entity not a party to this Decree.

24 b. Specific reservations. The covenant not to sue set forth in Paragraph 9
25 above does not apply, inter alia, to the following:

- 26 (1) claims based upon failure of MRC to meet the requirements of this Consent
27 Decree;
28 //

- (2) claims for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6);
- (3) claims for costs incurred by any natural resources trustees;
- (4) claims based upon criminal liability;
- (5) claims for response costs incurred by any federal agencies other than those specified within the definition of "United States" in this Consent Decree;
- (6) claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA;
- (7) claims for costs incurred or to be incurred by the United States in connection with the Site that are not within the definition of Past Response Costs set forth in Paragraph 3.

VIII. COVENANTS BY MRC

11. MRC hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Past Response Costs or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 111, 112, or 113, or any other provision of law, any claim against the United States including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113 related to the Past Response Costs, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

12. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties

1 expressly reserves any and all rights (including, but not limited to, any right to contribution),
2 defenses, claims, demands, and causes of action which each party may have with respect to
3 any matter, transaction, or occurrence relating in any way to the Site against any person not a
4 party hereto.

5 13. With regard to claims for contribution against MRC for matters addressed in this
6 Consent Decree, the Parties hereto agree that MRC is entitled to such protection from
7 contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C.
8 § 9613(f)(2).

9 14. MRC agrees that with respect to any suit or claim for contribution brought by it
10 for matters related to this Consent Decree it will notify the United States in writing no later
11 than 60 days prior to the initiation of such suit or claim. MRC also agrees that with respect to
12 any suit or claim for contribution brought against it for matters related to this Consent Decree
13 it will notify in writing the United States within 10 days of service of the complaint on it. In
14 addition, MRC shall notify the United States within 10 days of service or receipt of any
15 Motion for Summary Judgment and within 10 days of receipt of any order from a court setting
16 a case for trial for matters related to this Consent Decree.

17 15. In any subsequent administrative or judicial proceeding initiated by the United
18 States for injunctive relief, recovery of response costs, or other appropriate relief relating to
19 the Site, MRC shall not assert, and may not maintain, any defense or claim based upon the
20 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
21 defenses based upon any contention that the claims raised by the United States in the
22 subsequent proceeding were or should have been brought in the instant case; provided,
23 however, that nothing in this Paragraph affects the enforceability of the covenants not to sue
24 set forth in Section VII (Covenants Not to Sue by Plaintiff).

25 26 X. RETENTION OF RECORDS

27 16. Until five years after the entry of this Consent Decree, MRC shall preserve and
28 retain all records and documents now in its possession or control or which come into its

1 possession or control that relate in any manner to response actions taken at the Site or the
2 liability of any person for response actions conducted and to be conducted at the Site,
3 regardless of any corporate retention policy to the contrary.

4 17. At the conclusion of this document retention period, MRC shall notify the United
5 States at least 90 days prior to the destruction of any such records or documents, and, upon
6 request by the United States MRC shall deliver any such records or documents to the EPA.
7 MRC may assert that certain documents, records, and other information are privileged under
8 the attorney-client privilege or any other privilege recognized by federal law. Except for direct
9 correspondence between MRC and its attorneys, if MRC asserts such a privilege, it shall
10 provide the plaintiff with the following: (1) the title of the document, record, or information;
11 (2) the date of the document, record, or information; (3) the name and title of the author of the
12 document, record, or information; (4) the name and title of each addressee and recipient; (5) a
13 description of the subject of the document, record, or information; and (6) the privilege
14 asserted. However, no documents, reports, or other information created or generated pursuant
15 to the requirements of this or any other consent decree with the United States shall be withheld
16 on the grounds that they are privileged. Also, if the United States specifically requests a
17 privilege log for correspondence between MRC and its attorneys, MRC shall prepare one and
18 provide it to EPA. If a claim of privilege applies only to a portion of a document, the
19 document shall be provided to plaintiff in redacted form to mask the privileged information
20 only.

21 18. MRC hereby certifies, individually, that it has not altered, mutilated, discarded,
22 destroyed or otherwise disposed of any records, documents, or other information relating to its
23 potential liability regarding the Site since notification of potential liability by the United States
24 or the filing of suit against it regarding the Site and that it has fully complied with any and all
25 EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C.
26 §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XI. NOTICES AND SUBMISSIONS

19. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the MRC, respectively.

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

As to EPA:

Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 89509

As to MRC:

Kurt W. Melchior
Michael G. Thornton
Nossaman, Guthner, Knox, & Elliot
50 California Street
34th Floor
San Francisco, California 94111-4712

Christopher L. Cella, Esquire
General Counsel
Holly Corporation
100 Crescent Court
Suite 1600
Dallas, Texas 75201-1880

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

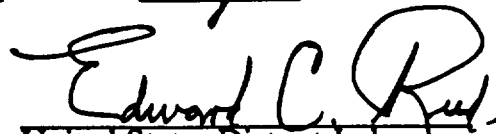
21. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIII. SIGNATORIES/SERVICE

22. Each undersigned representative of MRC and the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice certifies that he is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

23. MRC shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

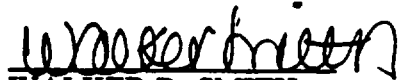
SO ORDERED THIS 26 DAY OF August, 1997.


United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Polycarb. Inc. et al. relating to the Polycarb Superfund Site.

FOR THE UNITED STATES

Date: 9/22/97

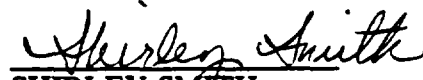

WALKER B. SMITH
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20044

Date: 9/22/97


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Environmental Enforcement Section
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KATHRYN E. LANDRETH
United States Attorney
District of Nevada

Date: 3/26/97


SHIRLEY SMITH
Assistant United States Attorney
100 West Liberty Street
Suite 600
Reno, Nevada 89509

Date: _____

MATTHEW STRASSBERG
Assistant Regional Counsel
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 89509

Date: _____

KEITH TAKATA
Director of Superfund Programs
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 89509

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Polycarb. Inc. et al. relating to the Polycarb Superfund Site.

FOR THE UNITED STATES

Date: _____

JOEL M. GROSS
Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20044

Date: _____


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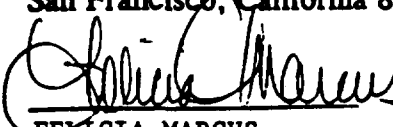
Date: _____

SHIRLEY SMITH
Assistant United States Attorney
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Reno, Nevada 89509

Date: 7/31/97



MATTHEW STRASSBERG
Assistant Regional Counsel
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 89509

Date: 8/19/97



FELICIA MARCUS
Regional Administrator
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 89509

FOR MONTANA REFINING COMPANY


Date: 5/2/97


LELAND GRIFFIN
Refinery Manager
Montana Refining Company
P.O. Box 1243
Great Falls, Montana 59403

Date: 5/5/97


KURT W. MELCHIOR
MICHAEL G. THORNTON
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Date: 5-7-97


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